

APPEAL NO. 170624

FILED MAY 23, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 8, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to a right knee patella dislocation; (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. M) on November 18, 2015, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the appellant/cross-respondent (claimant) reached MMI on March 8, 2015, as certified by the Texas Department of Insurance, Division of Workers' Compensation appointed designated doctor, (Dr. L); (4) the claimant's IR is zero percent as assigned by Dr. L; and (5) the claimant did not have disability resulting from the compensable injury from March 19, 2015, through the date of the hearing.

The claimant appeals the hearing officer's determinations regarding the issues of extent of injury, MMI, IR and disability as being contrary to the evidence. The respondent/cross-appellant (carrier) responded, urging that the hearing officer's determinations regarding the issues of extent of injury, MMI, IR and disability are supported by the preponderance of the evidence.

The carrier appeals the hearing officer's determination regarding the issue of finality, as being legally in error and contrary to the evidence. The appeal file contains no response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that on the date of injury she was standing on the door jamb of a vehicle in order to dry it and that when she stepped down her right knee popped out of joint.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the carrier has accepted as compensable a right knee sprain.

FINALITY OF FIRST CERTIFICATION

The hearing officer's determination that the first certification of MMI and assigned IR by Dr. M on November 18, 2015, did not become final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to a right knee patella dislocation is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant did not have disability resulting from the compensable injury from March 19, 2015, through the date of the hearing is supported by sufficient evidence and is affirmed.

MMI/IR

In her Finding of Fact No. 6, the hearing officer stated as follows:

The March 3, 2015, date of [MMI] and [zero percent] [IR] certified by Dr. [L] is supported by a preponderance of the other medical evidence.

In her Conclusion of Law No. 5, the hearing officer stated as follows:

[The] [c]laimant reached [MMI] on March 8, 2015.

In the Decision section of her Decision and Order, the hearing officer stated, in part, as follows:

[The] [c]laimant reached [MMI] on March 8, 2015.

In the Discussion section of her Decision and Order, the hearing officer stated, in part, as follows:

Dr. [L] certified that [the] [c]laimant reached [MMI] on March 18, 2015.

The preponderance of the other medical evidence supports Dr. [L's] opinion on [MMI] and [IR]. Therefore, her report will be adopted. [The] [c]laimant reached [MMI] on March 8, 2015. . . .

While we agree with the hearing officer that the certification of MMI and assignment of IR from Dr. L is supported by the evidence and may be adopted, a review of the record reveals that the MMI date assigned by Dr. L in her Report of Medical Evaluation (DWC-69) dated May 26, 2016, and accompanying narrative report is, in fact, March 18, 2015, rather than March 3, 2015, or March 8, 2015, as indicated by the hearing officer in her findings of fact, conclusions of law and decision. There is no DWC-69 in evidence which certifies MMI on March 3, 2015, or March 8, 2015.

We accordingly reform Finding of Fact No. 6 as follows:

The March 18, 2015, date of MMI and zero percent IR certified by Dr. L is supported by a preponderance of the other medical evidence.

We reform Conclusion of Law No. 5 as follows:

The claimant reached MMI on March 18, 2015.

We reverse the hearing officer's decision that the claimant reached MMI on March 8, 2015, and render a new decision that the claimant reached MMI on March 18, 2015.

The hearing officer's determination that the claimant's IR is zero percent as assigned by Dr. L is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's determination that the first certification of MMI and assigned IR by Dr. M on November 18, 2015, did not become final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to a right knee patella dislocation.

We affirm the hearing officer's determination that the claimant did not have disability resulting from the compensable injury from March 19, 2015, through the date of the hearing.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

We reverse the hearing officer's determination that the claimant reached MMI on March 8, 2015, and render a new decision that the claimant reached MMI on March 18, 2015.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge